IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 27504 of 2006(Y)

PETITIONER:

MOHIDEEN, S/O.K.MUHAMMAD,
THAZHATHAL VEEDU, PETTAH, FEROKE,
KOZHIKODE DISTRICT.

BY ADV. SRI.S.RAJASEKHARAN NAIR

RESPONDENTS:

1.THE TRIBUNAL FOR KERALA LOCAL SELF
GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM,
REPRESENTED BY THE SECRETARY.

2.SECRETARY,
FEROKE GRAMA PANCHAYAT,
FEROKE.

3. K. ABDUL NAZAR,
THAZHATHIL HOUSE,
PETTAH, FEROKE, KOZHIKKODE DISTRICT.

R2 BY ADV. SRI.BABU S. NAIR
R3 BY ADV.SRI.C.P.MOHAMMED NIAS
SRI.E.NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/01/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.27504 of 2006

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Dated: 15th January, 2006

JUDGMENT

Ext.P10 order passed by the 1st respondent, the Tribunal for Local Self Government Institutions, Trivandrum is under challenge by the petitioner who was the appellant in Appeal No.205/06 upon which Ext.P10 order was passed. The third respondent in this Writ Petition is the petitioner's own brother and he was the 2nd respondent in the appeal before the Tribunal. The 2nd respondent is the Secretary of the Feroke Grama Panchayat. According to the petitioner, as per Ext.P1 partition deed executed in the year 1985 he obtained a total extent of 18 cents of land consisting of two plots, one having an extent of 15 cents and the other three cents. His brother, the third respondent obtained 27 cents of land described in schedule C of the partition deed. The petitioner states that there exists an old latrine in his plot having extent of 3 cents. The latrine was constructed during the time of his father for use by workers. Presently the latrine is used by the petitioner's office staff. But during November, 2004 certain maintenance works were done to the latrine by the petitioner. It is claimed that the damaged roof sheet was replaced by a new tin sheet and that the damages on the walls were also repaired. The petitioner submits that on the basis of a complaint submitted by the third

respondent who is on inimical terms with him the 2nd respondent issued a provisional order under Section 406(2) of the Kerala Municipality Act directing demolition of the latrine and the shed. To that order the petitioner submitted reply. But ignoring the reply the 2nd respondent passed final order directing demolition of the latrine. Against the provisional order and the confirmation order the petitioner preferred appeal Nos.54/04 and 55/04 before the 1st respondent-Tribunal. The Tribunal set aside both the orders and directed the 2nd respondent to evaluate the construction afresh and proceed against the petitioner under Section 235 W of the Kerala Panchayat Raj Act if it is found that the construction was in violation of any provision of law having application within his jurisdiction. Ext.P2 is copy of that order. Pursuant to Ext.P2, the petitioner received a notice from the 2nd respondent under Section 235 W of the Kerala Panchayat Raj Act. To that notice the petitioner submitted Ext.P3 reply. Thereafter the petitioner received a notice from the 2nd respondent stating that an Overseer is conducting local inspection on 3.3.2005. The petitioner alleges that without conducting a proper inspection the Overseer returned from the site. Pursuant to that Ext.P4 notice dated 22.4.2005 commanding the petitioner to remove

the latrine within seven days was issued to him. To Ext.P4 the petitioner submitted Ext.P5 reply. Thereafter the petitioner was called for a personal hearing. During the hearing the 2nd respondent orally instructed the petitioner to submit an application for regularisation. Pursuant to that oral direction the petitioner submitted an application with a plan for regularisation. But the 2nd respondent surprised the petitioner by rejecting the petitioner's application. Thereafter the 2nd respondent issued Ext.P6 order on 27.6.2005 commanding the petitioner to demolish the latrine within three days. Aggrieved by Ext.P6, the petitioner submitted a petition before the Government. The Secretary to the Government forwarded a copy of the petition to the Deputy Director of Panchayats seeking a report. In that letter the Secretary also proposed to give sufficient time to the petitioner for taking up the matter before the Tribunal. However on 5.2.2006, the Secretary of the Panchayat issued Ext.P7 notice commanding the petitioner to remove the latrine within seven days. Against Ext.P7 also the petitioner submitted a petition before the Government. On that petition the Secretary to the Government instructed the Panchayat to stop further action pursuant to the said notice. Ext.P8 is the letter of the Government in this regard. Thereafter the third

respondent filed W.P.C.No.3412/06 before this court with a prayer to quash Ext.P8 letter and issue a writ of mandamus directing the Panchayat to proceed with the order of demolition. This court passed Ext.P9 judgment quashing Ext.P8. This court however adjourned the enforcement of Ext.P7 for three weeks and two weeks time was granted to the petitioner for approaching the 1st respondent-Tribunal. Thereafter the petitioner preferred Appeal Petition No.205/06 before the 1st respondent-Tribunal challenging both Exts.P6 and P7. The Tribunal has by Ext.P10 order dismissed the appeal preferred by the petitioner. The petitioner submits that after Ext.P10 order was passed by the Tribunal the third respondent tried to trespass into the petitioner's property and the petitioner became constrained to file a suit (O.S.No.441/2006) for injunction against the third respondent before the Munsiff's Court, Kozhikode. In this Writ Petition the petitioner impugns Ext.P10 order on various grounds and prays that Exts.P6, P7 and P10 be quashed.

2. The third respondent has filed a detailed counter affidavit. It is contended therein that Ext.P10 is a well reasoned order warrant no interference by this court under Article 226 of the Constitution. The counter affidavit denies the averments and allegations in the Writ

Petition. Inter alia it is contended that the petitioner's claim that he obtained 18 cents of land under Ext.P1 partition deed is incorrect. Even going by the recitals in Ext.P1 document it will be seen that the triangular portion upon which the petitioner claims that the latrine was in existence as to negligible an extent to permit any such construction. The contention that the latrine was constructed during the petitioner's father's time is stoutly denied. Ext.R3(a) photograph is relied on in this context to show that it is a new construction. It is pointed out that the latrine is a new and illegal construction put up by the petitioner after trespassing into the only way leading to the third respondent's house. This way is provided to the third respondent under Ext.P1 document itself. The latrine was constructed without obtaining prior permission from the Panchayat. The Panchayat was convinced that the latrine construction is illegal and thereafter only demolition order was issued. The Panchayat has not shown any haste in the matter. Sufficient time was afforded by the Panchayat to the petitioner to pursue his remedies. The counter affidavit submits that when the petitioner understood that in the light of Ext.P10 the latrine will be demolished, he filed a suit O.S.No.441/06 before the Munsiff's Court II A, Kozhikode. The intention in filing the suit is to prolong the

proceedings. The suit is nothing but an abuse of legal process. Ext.R3(b) is copy of the plaint. In Ext.R3(b) the Panchayat is not made a party at all. Ext.R3(c) is copy of the written statement filed in Ext.R3(b) suit. Correct facts have been disclosed and proper contentions have been raised in Ext.R3(c).

3. To the above counter affidavit, a detailed reply affidavit has been submitted by the petitioner reiterating his earlier stand. As an additional document, copy of the Commissioner's report in O.S.No.441/06 is produced as Ext.P11. According to the reply affidavit, the Panchayat is not a necessary party to O.S.No.441/06 since the cause of action which led to that suit was the attempt of the third respondent to demolish the latrine.

4. Elaborate submissions were addressed before me by Mr.S.Rajasekharan Nair, learned counsel for the petitioner. He would refer to the rival pleadings and the various documents placed on record particularly Exts.P1, R3(a), R3(b), P10 and P11. On behalf of Mr.C.P.Mohammed Nias, counsel for the third respondent Adv.Mr.Narayanan would address me. Mr.Narayanan would refer to Ext.P10 in extenso and submits that there is absolutely no warrant for interfering with Ext.P10.

5. Having considered the rival submissions made at the bar and having scanned Ext.P10 carefully, I am of the view that the learned counsel for third respondent is correct in his submission that Ext.P10 order of the Tribunal is not liable to be set aside by this court invoking jurisdiction under Article 226 of the Constitution. I notice from Ext.P10, that the Tribunal has Marshalled the facts correctly and on appreciating the evidence which was placed on record by the parties come to the right conclusion regarding the crux question, whether the latrine in question was an ancient one or was one brought into existence recently without obtaining permission from the Panchayat. This court in extra-ordinary jurisdiction for judicial review will not be justified in interfering with Ext.P10 which is a well reasoned order. The challenge against Ext.P10 will fail and the Writ Petition will stand dismissed, but in the circumstances without any order as to costs.

srd **PIUS C.KURIAKOSE, JUDGE**